

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 73/04

Date of award: September 15, 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**YEN U.N. GARMENT CAMBODIA Co, Ltd**

(Employer party)

**AND**

**Representatives of workers in YEN U.N. GARMENT CAMBODIA Co, Ltd**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representative:**

- 1- Mr. Yeh Chunting, General Manager
- 2- Ms. Ly Mingna, Administor
- 3- Ms. Huon Ly, General worker
- 4- Mr. Lim Vanna, Lawyer
- 5- Ms. You Cindy, Legal Assistant

**Address:** Kul Village, National Road No.4, Angsnoul district, Kandal , Cambodia.

**Tel:** 023 368 713 **Fax:** 023 368 931

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representative:**

- 1- Ms. Sam Sreymom, Vice-President of FTUNKC
- 2- Ms. Lach Sambo, President of Free Worker Union of YEN U.N.
- 3- Mr. Heng Samnang, Vice-President of the Union
- 4- Mr. Srun Than, Vice-President of the Union
- 5- Mr. Yim Khun, Worker representative
- 6- Sal Kim San, Worker representative
- 7- Suy Sokhem, Worker representative
- 8- Uth Kim Siep
- 9- Tep Phalla

**Address:** Kul Village, National Road No.4, Kantork quarter, Angsnoul district,  
Kandal, Cambodia.

**Tel:** 023 216 870 or 012 641 308 **Fax:** N/A

### **ISSUES IN DISPUTE:**

(In non-conciliation report)

- 1- The worker party demands that the company pay a meal allowance of 2000 riels to the workers who work overtime until 8:30 p.m.
- 2- The workers demand that the company pay their regular bonus of US\$7 per month.
- 3- The workers demand that the company dismiss Miss. Huon Ly (General Manager of the company).
- 4- The workers demand that the company not dismiss the workers in Group A13.
- 5- The workers demand that the company dismiss a Khmer worker who is the team leader of Group A13.
- 6- The workers demand that the company's Chinese Manager change behavior.
- 7- The workers demand that after the strike, no worker be fired.
- 8- The workers demand that the company maintain their wage and bonus during the strike.

### **JURISDICTION OF THE ARBITRATION COUNCIL :**

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labour Law (1997); 2002, the Prakas on the Arbitration Council 99/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas and the Prakas on the Nomination of Arbitrators 103/04.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labour Law. That conciliation hearing was succeeded one issue over 8 issues and there were 7 unsuccessful issues. The non-conciliation report, dated 20 August 2004, was submitted to the Secretariat of the Arbitration Council on 24 August 2004.

### **COMPOSITION OF THE ARBITRATION PANEL :**

Arbitrator chosen by the employer party:

**Mr. Mar Sambona**

Arbitrator chosen by the worker party:

**Mr. Ven Pov**

Chair arbitrator (chosen by the two arbitrators):

**Mr. Kong Phallack**

**HEARING AND EVIDENCE:**

**Date and place of hearing:**

1<sup>st</sup> Time: August 26, 2004 (2:30)

2<sup>nd</sup> Time: August 30, 2004 (8:30)

At the Secretariat of the Arbitration Council.

**Witnesses and Skillful people:** .....

**EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW:**

**Provided by the employer party:**

- 1- Certificate of the company registration at the Ministry of Commerce No. 2223, dated 24 July 2001
- 2- Memorandum and the company status dated, 18 August 2001
- 3- Internal Work Rules registered at the Ministry of Social Affairs and Labour, dated 14 March 2002
- 4- Letter transferring the right to Mr. Yeh Chunting to represent the company in order to solve the collective dispute of the company, dated 25 December 2003
- 5- Letter asking for urgent negotiations from the worker representatives and the Union representative in the company, dated 17 August 2004
- 6- Response letter of the company to the worker representatives, dated 17 August 2004
- 7- Letter of the company to the Labour Department about an appointment for negotiation between the worker representatives and Free Worker Union representative and the company, 19 August 2004
- 8- Announcement of the company asking workers to return to work, dated 19 August 2004
- 9- Announcement of the company asking workers to return to work, dated 20 August 2004
- 10- Announcement of the company asking workers to return to work, dated 21 August 2004

- 11- Letter of the company to the Police Office of Angsnoul district accusing 4 workers of locking the factory's main entrance, dated 20 August 2004
- 12- Lawsuit of the company to the Police Office of Angsnoul district, dated 23 August 2004, about some workers inciting violence, throwing stones at the factory, burning tires, robbing meals etc.
- 13- Lawsuit of the company to the Police Office of Angsnoul district, dated 24 August 2004, about some workers inciting violence, throwing stones at the factory, burning tires, robbing meals etc.
- 14- Lawsuit of the workers to the Military Commander Headquarter of Angsnoul district, dated 26 August 2004, about some worker gangsters who threatened to beat them and burn the factory.
- 15- The probationary contracts of 24 workers that the company terminated
- 16- Name list and written notification about the termination of 23 contracts
- 17- Name list and written notification about the termination of 24 contracts
- 18- Letter of the company hiring Lawyer, Lim Vanna, dated 24 August 2004
- 19- Court Order Injunction of the Kandal Court, dated 25 August 2004
- 20- Written notification about the termination of 4 probationary contracts, dated 21 August 2004, together with individual probationary contracts.
- 21- Letter proving the reception of the layoff compensation by Mr. Tep Phalla, ID 142, dated 1 August 2004
- 22- Miss. Chhay Somaly's lawsuit to the Angsnoul Police Office, accusing a worker, Khlorik Sorphorn, of defamation and assault, dated 26 August 2004

**Provided by the employee party:**

- 1- Letter of Free Worker Union of Cambodia, dated 1 September 2004
- 2- Letter proving the case reception of the Labour Inspection Department of the Ministry of Labour and Vocational Training, dated 24 April 2004, including a request for registration of Free Worker Union of Yen UN Factory
- 3- Workers' letter asking to the company for an urgent negotiation, dated 17 August 2004
- 4- Name list and finger prints of female workers in Group A13, requesting the dismissal of their own group leader
- 5- Lawsuit of workers and Kul villagers against the company Yen UN and their finger prints submitted to the local authority, dated 21 August 2004
- 6- Lawsuit and finger prints of 496 workers, demanding the dismissal of Ms. Lyly from the company (without any date)
- 7- Letter asking for strike by the workers to Angsnoul district governor, dated 19 August 2004

- 8- Letter of evidence showing of Ms. Lyly 's misconducts, dated 23 August 2004
- 9- Copied ID of 21 workers whom the Union said had been fired
- 10- Letter asking for the suspension of 8 workers to the Ministry of Labour, dated 26 August, 2004
- 11- Copy of probationary contract of 10 workers whom the company dismissed

**Received from MoLVT:**

- 1- Non-conciliation report of the collective dispute, dated 22 July 2004
- 2- Letter 0033, dated 3 August 2004 of the Minister of Labour

**Presentation by employers and employees in the hearing.**

Witnesses from the employee party:

1. Suy Sokhem, worker in group A13
2. Ly Kimleang, worker in group A13
3. Sal Kimsan, worker
4. Tep Phalla, worker who has been suspended on 1 August 2004

**The two parties decided in the hearing that: This award is not immediately binding.**

**CASE SUMMARY:**

Yen UN Garment (Cambodia) Co Ltd (called Yen UN) is located in Kul Village Kantork quarter, Angsnuol district, Kandal. The company employs 1100 workers. On 18 August 2004 at 2:00 p.m. there was a strike started by 58 workers in group A13.

On 19 August 2004 at around 7:00 a.m. about 900 workers of the above company went on strike, led by the Free Worker Union of Cambodia. On 20 August 2004 the Department of Labour and Vocational Training of Kandal conciliated the 9-point demand of the workers. During the conciliation process, officials from the department of Kandal started with the first four points. But, the employee party walked out during the conciliation when the company did not agree to dismiss, as demanded in the fourth point, a worker Huon Ly (called Ms. LyLy), who was the general manager in the company.

The workers continued striking till the case was sent to the Arbitration Council on 24 August 2004. The Secretariat of the Arbitration Council summoned parties to select arbitrators as their representatives. The worker party refused to do so. The Secretariat organized the selection of an arbitrator by lot to represent the worker party in accordance with the existing law on 25 August 2004.

After the selection of the three arbitrators for the case, the Arbitration Council issued an order, dated 25 August 2004 for the workers to stop striking immediately, to return to work by 2:00 p.m. in accordance with their shifts. The [order stated that the] employer must not take any measures or disciplinary actions against the workers and must wait until arbitration process ended.

On August 26, 2004, the two parties were called in the Arbitration Council to attend the hearing, but the worker party had not yet returned to work as ordered by the Council. The Arbitration Council delayed the hearing and ordered the two parties to agree to apply the decision of the Arbitration Council, or the Council would not hear the case.

On August 30, 2004 at around 8 am, the Arbitration Council [attempted to hear] the case for the second time, but the employer party suspended 8 workers who were involved in the strike. However, the employer party later agreed to lift the sanction on the 8 workers, waiting until the arbitration process ended.

During the hearing, the lawyer of the employer party raised the issue of “who was the plaintiff? Did the Free Worker Union of the company register properly? If not, is it entitled to represent the workers as the plaintiff? If the Union is not entitled, who is the plaintiff of the case?” The lawyer asked the Arbitration Council to consider these issues. Also, the two parties reached an agreement on the first fourth, sixth, and seventh, (See the Award, no. 2, 5, 6 and 7 on pages 17 and 18) out of eight points mentioned above. For the non-conciliated points, the Arbitration Council considers as follows:

**FINDING OF FACT:**

- After having examined the collective conciliation
- After having listened to the presentation of the employee party as mentioned above and in the minute during the hearing
- After having reviewed documents as mentioned earlier

**We find that:**

*1<sup>st</sup> issue: Union issue:*

The Free Worker Union of the company Yen UN registered at MoSALVY on 24 April 2004, but the Ministry has not approved it as requested yet. During the hearing, there were four shop stewards and a representative of the workers in the conflict.

*2<sup>nd</sup> issue: Overtime work issue:*

Regarding the overtime work issue and cost of meals, the worker and employer parties agreed to wholly implement the Notification 017/00.

*3<sup>rd</sup> issue: US\$7-bonus issue:*

At present the company paid an attendance bonus of US\$5 to the workers who come to work regularly as long as the employees do not arrive 15 minutes or more late, twice a day. The worker is deprived of a bonus if he or she comes 15 or fewer minutes late three times or arrives 15 minutes or more late, once. The workers demanded that the employer maintain the attendance bonus for the workers who were absent from work for three days with or without permission if the employer could not afford to increase the bonus up to US\$7 per month.

*4<sup>th</sup> issue: Demand to dismiss staff:*

4.1. Demand to dismiss Ms. Lyly, General Manager

Ms. Lyly (Huon Ly) used to be the Administration Chief and later became the general manager of the company; [although she currently is not] she could become a personal assistant of the company boss. The workers were unhappy with Ms. Lyly's behavior related to the dismissal and transfer of workers in the company so far. The workers thought that every transfer and dismissal of workers was under Ms. Lyly's direct supervision.

4.2. Regarding the [demand to] dismiss of Ms. Nut Sokunthea, group leader of A13

Ms. Nut Sokunthea was the leader of A13, started working in the company since January 9, 2004. Ms. Nut Sokunthea was accused by the workers of putting pressure and threatening workers to work overtime, of using obscene words, and of insulting the worker representative and other workers in the group. Workers of A13 said that Ms. Nut Sokunthea had threatened all the A13 members, who complained to have her fired, that if they could not succeed she would take revenge, eliminating the workers one by one. In the hearing, the Arbitration Council asked the employer representative whether Ms. Nut Sokunthea could be transferred from A13 to other groups. The representative responded that he had to talk with the company management with regard to the issue. The employee party demanded that the company dismiss Ms. Nut Sokunthea.

*5<sup>th</sup> issue and 8<sup>th</sup> issue relating to wage and bonus during the strike*

The workers demanded that the company maintain their wage and bonus during the strike so far. The strike started on 18 August 2004 at around 2:00 p.m. by approximately 60 workers in the group A13. On 19 August 2004 at about 7:00 a.m., approximately 900 workers went on strike with workers of group A13 demanding 9 points. The workers had provided notice to Angsnuol Governor in a letter dated August 19, 2004, but the workers did not send

the letter to the company. During the strike, the worker burned tires, among other acts. During the strike, the company had their product orders finished by other companies. The company refused to maintain the wages and bonuses during the strike.

**REASON FOR DECISION:**

1. Union Issue

Before considering the non-conciliated points, the Arbitration Council considers whether the Free Worker Union of the company can be the legal representative in this collective dispute?

The Free Worker Union of the company Yen U.N. had registered at the MoSALVY since 24 April 2004, but the Ministry had not yet approved.

Article 268 of Labour Law requires the Ministry of Labour to respond within 2 months after receiving the form for registration. Otherwise, the registration will be granted automatically to the requesting union. The receipt of the Ministry was dated 24 April 2004. The receipt lasts four months from the day of request until 19 August 2004. In addition, in the receipt the Ministry requires the parties in the dispute to discuss and conciliate their issues (read the bottom part of the receipt). So, the delay by the Ministry is due to its own internal administrative affairs, and the Union has to have rights and obligations that it is legally entitled to as a registered union.

Therefore, the Arbitration Council finds that the Free Worker Union has the legal entitlement to represent the workers to negotiate and sue the company.

2. Overtime Work Issue: the two parties reached an agreement.

3. US\$7 Bonus Issue:

Can the worker demand a US\$7 monthly attendance bonus?

Based on Notification 017 of MoLSAVY, "...employees who work regularly get at least a bonus of US\$5 a month..." In this case, the employees demanded that the company increase the bonus to US\$7 a month, saying that it is an incentive for workers to come to work regularly. The employees did not give any reasons or evidence to support their demands. However, the company called for the implementation of the Notification 017 of MoLSAVY, that is, maintaining the monthly regular bonus of US\$5 because the company was facing difficulties and was not making profits.

Even though the demand asked by the employee party was not legally founded, the employees can proceed with the claim as an interests dispute, which the Arbitration

Council can decide based on equity. But, the Arbitration Council will apply the equity principle as long as the employees can persuade the Council that:

1. The employee party has taken efforts to reach a collective bargaining agreement, and
2. The party has proved that the demand to increase the regular bonus is reasonable

In this case, the employees neither took efforts in reaching a collective bargaining agreement nor showed any evidence to prove that their demand to increase bonus, which is more than mentioned in the Ministry's Notification 017/00, is reasonable. Therefore, the demand to increase the bonus from US\$5 to US\$7 is rejected by the Arbitration Council.

In the hearing, the employee party recommended that if the employer did not increase the bonus to US\$7, then they wanted the company to not reduce the monthly attendance bonus of US\$5 for the workers who are absent without permission for 2 or 3 days. As stated in the Notification 017/00, which requires the employer to pay the bonus of US\$5 to "...those workers who work regularly."

The Arbitration Council finds that the present policy of the company, with regard to attendance payments as mentioned above is in accordance with the rules of Notification 017/00. Therefore, the Arbitration Council rejects the demand.

#### 4. Demand to dismiss Ms. Lyly and Ms. Nut Sokunthea, team leader of A 13

##### 4.1. Demand to dismiss Ms. Lyly

As a rule, the Arbitration Council finds that the employees do not have rights to demand the employer to dismiss any employees unless the employees can prove that the employee is a dangerous person who cannot be allowed in the company or factory, and that keeping the person can cause harm to the workplace. (See 04/03 - Lida, 14/03 - Chou Sing, 17/03 Ho Hing, 6/03- Chou Sing, 15/04 - Lucky Zone, 16/04 - Yada, 32/04 - Ecent, 34/04 - Full Value, and 52/04 - Sin Kam. But, in this case, the employee party did not show any clear evidence to prove that Ms Lyly is a dangerous person, who might cause harm to the workplace other than their dislike of her management and the behavior of Ms. Lyly.

In addition, according to Article 65 of the Labour Law of 1997, a labor contract establishes working relations between the employee and the employer. It is subject to the common law and can be drawn up in a way that conforms to the needs of the contracting parties. Since this contract is under the common law, the Decree-Law 38 on Contracts also covers this kind of contract. Decree-Law 38

states that, “contract is the fundamental law of the parties. The contract can be adjusted as long as there is consent by the parties. The contract applies only to the involved parties.”

In this sense, only the involved parties have the right to terminate this contract. Therefore, it is clear that any hiring or dismissing any workers in the company is entitled to the employer only, who is the party in the contract.

Even in the event of an employee committing serious misconduct as mentioned in Article 83 of the Labour Law, the Arbitration Council finds that the Labour Law does not require that the employer must fire the worker, but instead the Labour Law merely provides the right to the employer to fire employees. (See 14/03 - Chou Sing and 18/04 - Hou Hing).

Therefore, the Arbitration Council finds that the demand by the employees is not legally founded. So, the Arbitration Council rejects it.

#### 4.2. Demand to dismiss Ms. Nut Sokunthea, team leader of A 13

Similar to the case of Ms Lyly, the employees are obliged to provide evidence and clear reasons to prove that Ms. Nut Sokunthea is a dangerous person who may cause harm to the workplace of workers in group A13.

In the hearing, worker Ly Kim Leang testified that, “Ms. Nut Sokunthea threatened the workers in group A13 that if they threatened to dismiss her, they have to succeed. If not, she will eliminate everyone.” Moreover, the Arbitration Council finds that the strike on August 18, 2004 resulted from the demand that the company dismiss Ms. Nut Sokunthea, who is the leader of group A13.

Based on the reasons above, the Arbitration Council finds that the dispute between workers of group A13 and their team leader Ms. Nut Sokunthea is so serious that it can cause harm to the workplace if Ms. Nut Sokunthea is still working as the team leader of group A13, but the Arbitration Council cannot find any rational reasons to order the employer to dismiss Ms. Nut Sokunthea. The Arbitration Council finds that to prevent the conflict from growing more serious later and for the sake of the safety and security in the workplace of group A13, the employer should change the position of Ms. Nut Sokunthea from team leader of A13 to another group.

5. 8<sup>th</sup> issue—demand for wages and bonus during striking

Article 332 of Labor Law of 1997 stipulates that “labor contracts are suspended during the strike. During the strike work is not performed, and the salary is not paid.” But Article 334 states that “if the employer during the strike recruits replacement workers, the employer is obliged to pay the salaries of the striking workers for the duration of the strike.

The Arbitration Council finds that the transportation of raw material to other factories can cost the same to the amount for recruiting other workers to replace the strikers. The difference is that the replacing workers work outside the company, which is having conflict. (See Arbitral Award 04/03 - Lida Garment).

Therefore, the employees can demand the wages during the strike. But, the strike by the workers in Yen UN Factory is not in accordance with the procedures for striking, namely a lack of prior notice in accordance with the Law and not attempting to conciliate before going on strike. According to Article 324, employees have to give prior notice to the company at least seven days before going on strike. Actually, the employees informed the company on 19 August 2004 a day after the strike, and the employees did not inform the employer.

According to Article 320(4), “all peaceful methods of resolving the dispute with the employer must have been tried before the right to strike can be exercised.” In fact, the strike at Yen UN was held without exhausting the efforts to reconcile the conflict as required by Article 320, paragraph 4 because the employees went on strike before any conciliation procedure of the Arbitration Council [occurred], which is mandatory that the parties have to follow in search of a peaceful collective resolution. As the strike was not held in accordance with strike procedures, the strikers are not entitled to the full protection of the Law, which requires appropriate respect for legal procedures. Therefore, the demand for wages during the strike is not acceptable.

Similarly, Article 333 of the Labour Law prohibits the employer from imposing sanctions on the strikers. But, the prohibition is possible in case the strike is held in accordance with the existing laws on strike. If the employees do not comply with the law, they will not be fully protected by the law. So, the Arbitration Council cannot extend this protection for the workers who do not comply with Chapter 13 while the workers think that according to Article 333 of the Labour Law it was an unfounded sanction to withhold the bonus of US\$5 from the employees who joined in the strike, which they believe violates Chapter 13 of the Labour Law.

In addition, the attendance bonus of US\$5 is paid only for "...those employees who work regularly" according to the Notification 017/00. The participation in the strike that is not lawful means abusing the Notification. Therefore, the employer can deprive the employees of the bonus.

Therefore, the Arbitration Council rejects the demand by the workers for wages and bonus during the strike. (See 04/03 - Lida Garment,, 08/04 -Wash Concept, 15/04 - Lucky Zone, 16/04 - Yada Printing, and 25/04 - Standard Garment).

Based on facts, evidence, legal principle, the Arbitration Council makes its decision as follows:

**DECIDES :**

1. Free Worker Union is a legal representative in the lawsuit of employees of Yen UN factory.
2. Orders the company to apply the overtime work to the workers in accordance with Notification 17/00 of the Ministry of Labour. (Based on agreement).
3. Rejects the employees' demand for US\$7 attendance bonus.
4.
  - 4.1. Rejects the employees' claim demanding the employer to dismiss Ms. Lyly.
  - 4.2. Rejects the employees' demand to dismiss Ms. Nut Sokunthea.
5. The employer is prohibited from firing the regular workers in group A13. (Based on agreement).
6. The employer must not dismiss any employees who joined the strike. (Based on agreement).
7. The two parties have to behave in a proper and dignified manner in communications. As for photographing, the employer can take photos of workers' striking or the representative of the workers in case they commit misconduct or in case the workers do not work during working hours or when the representative helps any workers who have troubles. The employer is not allowed to take photos of the workers or their representative in normal cases and without prior permission from the workers involved. (Based on agreement).
8. Rejects the employees' demand for wage and bonus during the strike.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Mar Sambona**

Signed: .....

Arbitrator chosen by the worker party:

Name: **Venn Pov**

Signed: .....

Chair of arbitration panel:

Name: **Kong Phallack**

Signed: .....

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.

This Award is immediately binding upon the parties if parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.